FILED
FEB 6 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-953

PEYTON BERBLING, ET AL.,
Petitioners,

vs.

EZELL LITTLETON, ET AL.,
Respondents.

BRIEF OF THE ILLINOIS JUDGES ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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BRIEF OF THE ILLINOIS JUDGES ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Illinois Judges Association, as amicus curiae, respectfully requests that this Court issue a writ of certiorari to review the decision of the Court of Appeals for the Seventh Circuit in the instant case.

CONSENT TO FILE.

Consent to file this brief amicus curiae has been granted in writing by petitioners and respondents. The letters of consent have been filed with the Office of the Clerk.

INTEREST OF AMICUS CURIAE.

The Illinois Judges Association is a voluntary organization of the judges of the courts of general jurisdiction in the State of Illinois. Its interest in the outcome of this litigation, which contemplates the subordination of state judges in the performance of their judicial duties to the supervision and control of federal judges, is obvious. For the decision below holds that the state judiciary is not a body of independent judges but rather is subordinate to the judges of the federal trial courts in the performance of their judicial tasks. While the decision of the Court of Appeals for the Seventh Circuit commands such supervision and control by injunction only with regard to the fixing of bail and the sentencing of guilty defendants, its rationale would support similar controls over every aspect of a state court judge's duties. The judgment below places in jeopardy the independence as judicial officers of every Illinois state court judge.

OPINIONS BELOW.

The opinion for the Court of Appeals for the Seventh Circuit is reported at 468 F. 2d 389. It is reproduced in the Appendix to the Petition for Certiorari. The opinion of the District Court for the Eastern District of Illinois is not reported. It is reproduced in the Appendix to the Petition for Certiorari.

JURISDICTION.

This Court's jurisdiction is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

Whether the decision of the Court of Appeals for the Seventh Circuit which places state court judges under

permanent injunction subject to the continuing supervision of the United States District Court with regard to all bail orders and criminal sentences:

1. Violates the rule of judicial immunity as stated by this Court in *Pierson* v. *Ray*, 386 U. S. 547 (1967)?

2. Violates the Guarantee of Republican Form of Government Clause of the United States Constitution, Art. IV, § 4?

3. Violates the decisions of this Court requiring lower federal courts to abstain from interference by injunction with the criminal law processes of a state?

4. Violates the requirements of this Court that injunctions against state criminal processes not issue on the basis of conclusory allegations at the behest of persons not affected by the actions of the state court judges sought to be enjoined?

STATEMENT.

This suit was brought by plaintiffs on behalf of an undefined class of which they were not members. As to the state court judges, petitioners here, the complaint alleges that they set bail for criminal defendants according to a predetermined schedule with the result that they discriminated against Negro defendants and that they imposed higher sentences upon convicted Negro defendants than upon convicted whites.

No plaintiff is alleged to have been among those charged and bailed or among those sentenced. No plaintiff is alleged to be threatened with the possibility of requiring bail or being subjected to sentence. Not a single instance of improper bail procedure or excessive sentence was asserted in the complaint. Indeed, there is nothing in the complaint to support the conclusory allegations of plaintiffs that

either they or any other members of the class were the victims of discrimination.

The District Court dismissed the complaint against the state court judges on the ground that judicial immunity protected them from a suit of this nature. The Court of Appeals for the Seventh Circuit, divided two to one, held that the Civil Rights Acts, now 42 U. S. C. §§ 1981-85, removed the judicial immunity that would otherwise exist.

The Court of Appeals put the issue this way: "Simply stated, that question raises to issue whether or not Congress, in passing these acts, intended to eliminate the doctrine of judicial immunity." (468 F. 2d at 396). Although this Court, in *Pierson* v. *Ray*, 386 U. S. 547 (1967), had canvassed the legislative history and concluded that it was not the intention or effect of the statutes to eliminate judicial immunity, the Court of Appeals for the Seventh Circuit, reviewing exactly the same legislative history, reached the opposite conclusion, because this case involved injunctive relief and *Pierson* was concerned with damages.

The Seventh Circuit concluded that a decree could be entered by the District Court directed to the judges of the Illinois courts: "We do not mean to require the district court to sit in constant, day-to-day supervision of either state court judges or the State's Attorney. An initial decree might set out the general tone of the rights to be protected and require only periodic reports of various types of aggregate data on actions on bail and sentencing and disposition of complaints. Nevertheless, we have complete confidence in the district court's ability to set up further guides as required and if necessary to consider individual decisions." (468 F. 2d at 414-15.) In short, these state courts were to be put into receivership, with review of their actions in this area to be undertaken by the federal district court.

REASONS FOR GRANTING THE WRIT.

I. The Decision of the Court of Appeals for the Seventh Circuit Is in Conflict with the Decision of This Court in Pierson v. Ray and in Conflict with Decisions of Other Circuits on the Important Question Whether Judicial Immunity Was Abolished by 42 U. S. C. §§ 1981-85 in Civil Rights Cases.

The Court of Appeals for the Seventh Circuit assumed that unless the Civil Rights Acts as codified in §§ 1981-85 of Title 42 abolished judicial immunity, the present action could not be maintained against the state court judges in this case. The question whether the Civil Rights Acts abolished the doctrine of judicial immunity was answered by this Court in *Pierson* v. *Ray*, 386 U. S. 547 (1967), in the negative. There is nothing in the legislative history or in this Court's opinion in *Pierson* to sustain the distinction upon which the Seventh Circuit based its conclusion: "when a class-discrimination is alleged, judicial officers may be enjoined." (468 F. 2d at 408.)

Nothing in the language of the debates affords a basis for the proposition that judicial immunity does not exist because the action purports to be a class action or because the action asks for the kind of relief sought and granted here. (There were fifteen plaintiffs in *Pierson*, enough to constitute a class, and there the class was identifiable and not merely speculative.) Reason and history support the conclusion that the distinction created by the Seventh Circuit is invalid. For this Court established, even before the classic *Bradley* v. *Fisher*, 13 Wall. 335 (1872), that the purpose of judicial immunity is to assure the independence of judicial judgment by precluding personal jeopardy of the judges who might err. The sanctions of contempt are at least as dangerous to that judicial independence as the risk

of a damage action. Under the decree proposed by the Court of Appeals in this case, if the district court concludes that any bail fixed or sentence imposed by a judge subject to the decree is discriminatory, the state court judge is in jeopardy not only of a jail sentence but also of a fine by way of civil of criminal contempt. He would no longer be exercising his own judgment in these matters, which is the function with which he is charged, he would be attempting to effectuate what he thought were the views of the federal district judge, lest he be met with sanctions at least as threatening as those precluded by this Court's judgment in *Pierson* v. *Ray*. It is hard to conceive a more stringent invasion of the state court's judicial functions.

The decree below also raises the serious constitutional question whether it is itself in violation of the Republican Form of Government Clause of the Constitution. Art. IV, §4. This point was made by the Court of Appeals for the Third Circuit sitting *en banc* in *Bauers* v. *Heisel*, 361 F. 2d 581. (CA 3d, 1966.) There, rejecting the notion that the Civil Rights Acts abolished judicial immunity, in a decision prior to *Pierson* v. *Ray*, the Third Circuit said:

> The statute before us also has no express declaration to that effect; nor does the legislative history support the conclusion that Congress intended to dissolve judicial immunity. These factors, when considered with the Supreme Court's determination that legislative immunity was not inimical to the purpose of the Act, lead to the inescapable conclusion that the act was not intended to be in derogation of the common law. (361 F. 2d at 587-88.)

It gave as an additional reason to support this conclusion, the avoidance of a serious constitutional question that would be created by the contrary result:

> Article 4, § 4 of the United States Constitution provides: "The United States shall guarantee to every State in this Union a Republican form of Government

> * * *." The framers of the Constitution clearly evinced their belief that a separate and independent judiciary is an indispensable element of a republican form of government. See The Federalist, pp. 236, 303-305, 488, et seq., 494, et seq. We believe that abrogation of judicial immunity by Congress would destroy the independence of the judiciary in the various states, and consequently deprive them of a republican form of government. The language of the Supreme Court in Bradley v. Fisher, 80 U. S. (13 Wall.) 335, 347 . . . lends support to our conclusion. (361 F. 2d at 588.)

The decision of the Court of Appeals for the Seventh Circuit is predicated on the proposition that the Civil Rights Acts abrogated judicial immunity. It was this predicate that the Court of Appeals for the Third Circuit found violative of the Fourth Article of the Constitution.

In addition to being in conflict with the decision of this Court in *Pierson* v. *Ray*, and with the decision in *Bauers* v. *Heisel*, the decision of the Court of Appeals for the Seventh Circuit is in conflict with decisions of other Courts of Appeals, which have applied the doctrine of judicial immunity equally to injunctive actions and damage suits. Nor is there any suggestion in any of the other cases that class actions somehow call for special treatment. (Certainly, if class actions call for separate treatment in injunction suits, there is no reason why they should not also be an exception to the rule as to damages reiterated in *Pierson* v. *Ray*.) The essence of the rule of judicial immunity is the freedom of the judge from the threat of individual punishment in the event that a different court should disagree with his conclusion; it is unrelated to the nature of the suit brought, whether it be injunctive or damage action, whether it be individual or class action.

The opinion below is in conflict with those of several other Circuits which denied judicial immunity in injunctive actions. In *Gay* v. *Heller*, 252 F. 2d 313 (CA 5th, 1958),

the Fifth Circuit applied the rule of judicial immunity to a suit seeking both injunctive relief and damages. And in *Cade* v. *Carpenter*, 367 F. 2d 572 (CA 5th, 1966), the same court denied specific relief on the grounds that the complaint "fails to state a ground on which relief can be granted since the actions of the district judge are protected by the bar of judicial immunity." And in *Collins* v. *Moore*, 441 F. 2d 550 (CA 5th, 1971), the same court pointed out: "The proper means to correct an error in the proceedings against the defendant is by direct appeal or by writ of habeas corpus."

The Court of Appeals for the Second Circuit, in *Zuckerman* v. *Appellate Division*, 421 F. 2d 625 (CA 2d, 1970), in an action seeking declaratory and injunctive relief under the Civil Rights laws held that a court was not a "person" within the intendment of the statute. It went on to say: "In addition it has been held that 42 U. S. C. § 1983 does not affect the established common law rule that a judge is immune from a suit arising out of the exercise of his judicial powers." (421 F. 2d at 626, n. 2.) And, in *Gaito* v. *Ellenbogen*, 425 F. 2d 845 (CA 3d, 1970), the Court of Appeals for the Third Circuit denied injunctive relief on the ground of judicial immunity.

The Court of Appeals for the Sixth Circuit stated in *Kenney* v. *Fox*, 232 F. 2d 288, 292 (CA 6th, 1956), aff'g 132 F. Supp. 305 (WD Mich., 1955), where the relief sought was a declaratory judgment to void a judgment: "We are of firm opinion that the common law rule of immunity of a judicial officer for acts done in the exercise of his judicial function, where he has jurisdiction over both parties and the subject matter, has not been abrogated by the Civil Rights Act." So, too, the Eighth Circuit, in both *Tate* v. *Arnold*, 223 F. 2d 782 (CA 8th, 1955), and *Rhodes* v. *Houston*, 309 F. 2d 959 (CA 8th, 1962), aff'g 202 F. Supp. 624 (D. Neb., 1962), cases in which both damages

and injunctive relief were sought, ruled that judicial immunity was not erased by the Civil Rights Acts. And the Tenth Circuit, in *Gately* v. *Sutton*, 310 F. 2d 107 (CA 10th, 1962), where specific relief was sought under § 1983, upheld the rule of judicial immunity against a damage claim and asserted that the federal court had no power to issue mandamus "to direct state courts or their judicial officers in the performance of their duties. . . ."

The Court of Appeals for the Third Circuit, in *Robinson* v. *McCorkle*, 462 F. 2d 111, 113 (CA 3d, 1972), where the plaintiff sought damages and a declaration of unconstitutionality of a state law under which he was committed, held the doctrine of judicial immunity to be a bar: "The judicial immunity doctrine also sustains the dismissals. Assuming *arguendo* that Philip Robinson was committed under a repealed statute, such judicial miscue does not remove the shield of immunity. Judge Whipple properly pointed to the essential distinction between 'clear abuse of jurisdiction' and 'excess of jurisdiction.' . . . See also Marcedes v. Barrett, 453 F. 2d 391 (3d Cir. 1971), where a civil rights suit was filed against a battery of judicial personnel who performed judicial and quasi-judicial duties in connection with a state criminal proceeding. We affirmed the dismissal of the complaint on the bilateral grounds of judicial immunity and failure to allege specific facts in support of the conclusory allegations of the complaint."

Some federal district courts have reached the opposite conclusion. They have held that judicial immunity has been voided by the Civil Rights Acts in question here. See *Cassidy* v. *Ceci*, 320 F. Supp. 223 (E. D. Wis., 1970); *Rakes* v. *Coleman*, 318 F. Supp. 181 (E. D. Va., 1970); *Koen* v. *Long*, 302 F. Supp. 1383 (E. D. Mo., 1966); *United States* v. *Clark*, 249 F. Supp. 720 (S. D. Ala., 1965). These cases, however, but underline the importance of review by this Court of this question. Of all the Courts of Appeals, only

the Court of Appeals for the Seventh Circuit has come to the conclusion that the Civil Rights Acts have abrogated the doctrine of judicial immunity in injunctive actions.

II. The Decision of the Court of Appeals for the Seventh Circuit Is in Conflict with Decisions of This Court and Those of Other Circuits on the Question Whether a Civil Rights Suit May Be Predicated on Conclusory Allegations Unsupported by Facts.

It is to be noted that there is no allegation that any plaintiff suffered the wrongs alleged or, indeed, that any plaintiff was in danger of having such a wrong imposed on him. For the reasons set out in this Court's opinion in *Boyle* v. *Landry*, 401 U. S. 77 (1971), the Court of Appeals was clearly in error in imposing the injunction that it did here.

> It is obvious that the allegations of the complaint in this case fall far short of showing any irreparable injury from threats or actual prosecutions under the intimidation statute or from any other conduct by state or city officials. Not a single one of the citizens who brought this action had ever been prosecuted, charged, or even arrested under the particular intimidation statute which the court below held unconstitutional. All the charges of the complaint deal broadly and generally with all the state statutes and city ordinances that the appellees originally challenged. In fact, the complaint contains no mention of any specific threat by any officer or official of Chicago, Cook County, or the State of Illinois to arrest or prosecute any one or more of the plaintiffs under that statute either one time or many times. . . . There is nothing contained in the allegations of the complaint from which one could infer that any one or more of the citizens who brought this suit is in any jeopardy of suffering irreparable injury if the State is left free to prosecute under the intimidation statute in the normal manner. As our holdings today in *Younger* v. *Harris*,

> [401 U. S. 37 (1971)], and *Samuels* v. *Mackell*, [401 U. S. 66 (1971)], show, the normal course of state criminal prosecutions cannot be disrupted or blocked on the basis of charges which in the last analysis amount to nothing more than speculation about the future. The policy of a century and a half against interference by the federal courts with state law enforcement is not to be set aside on such flimsy allegations as those relied upon here. (401 U. S. at 80-81.)

The language of this Court in *Boyle* v. *Landry* is applicable, *pari passu*, to the facts of the instant case. It is not surprising that *Boyle* v. *Landry* played no role in the opinion of the majority for the court below.

The totality of the amended complaint's allegations relating to the judicial defendants are merely conclusory and without any suggestion of factual basis. The charges were that:

> (a) They set bond in criminal cases without regard to the Constitution and statutes of the State of Illinois requiring that bond be merely an assurance that the defendant will appear in court when required, not that it be punishment, in that they follow an unofficial bond schedule without regard to the facts of a case or circumstances of an individual defendant, all in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.
>
> (b) On information and belief they set sentences higher for plaintiffs and members of plaintiffs' class than for white persons and impose higher conditions.

A third equally nebulous charge was regarded by the Court of Appeals as removed from the case, since the Illinois courts are not allowed to exact jail penalties for failure to pay fines. 468 F. 2d at 393, n. 1.

Reference has already been made to the judgment of the Court of Appeals for the Third Circuit in *Robinson* v.

McCorkle, 462 F. 2d 111 (CA 3d, 1972). The decision below conflicts with the Third Circuit judgment not only on the issue of judicial immunity but on the question of sufficiency of the complaint as well. For, as the Third Circuit said in *Robinson:*

> Dismissal in favor of the judge, borough attorney and clerk, on the basis of the pleadings, cannot be faulted. Not only are the conspiracy allegations unsupported by any specific facts, but the complaint fails to make a sufficient showing under 42 U. S. C. 1985(3) that Philip Robinson was denied equal protection of the law. With near unanimity, the courts have rejected complaints containing mere conclusory allegations of deprivations of constitutional rights protected under § 1983(3). "A conspiracy claim based upon § 1985(3) requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals. Snowden v. Hughes, 321 U. S. 1 . . . (1944); Hoffman v. Halden, 268 F. 2d 280 (9th Cir. 1959); Colon v. Grieco, 226 F. Supp. 414 (D. N. J. 1964); Selico v. Jackson, 201 F. Supp. 475 (S. D. Cal. 1962)." Daly v. Pedersen, 278 F. Supp. 88 (D. Minn. 1967); Weise v. Riesner, 318 F. Supp. 580, 583 (E. D. Wis. 1970). Cf. Griffin v. Breckenridge, 403 U. S. 88 . . . (1970). (462 F. 2d at 113.)

What the Third Circuit announced with reference to § 1985(3) is equally applicable to the other sections of the statute and the constitutional provisions under which plaintiffs sought to proceed here. See *Negrich* v. *Hohn*, 379 F. 2d 213 (CA 3d, 1967); *United States ex rel. Hoge* v. *Bolsinger*, 311 F. 2d 215 (CA 3d, 1962); *Marcedes* v. *Barrett*, 453 F. 2d 391 (CA 3d, 1971).

III. The Decision of the Court of Appeals for the Seventh Circuit Is in Conflict with Those of This Court and of Other Circuits on the Propriety of Federal Court Injunctions to Correct Judicial Errors by State Trial Courts.

Even if we assume that the complaint stated a claim of wrongdoing by the trial court judges in the instant case, the remedy afforded by the Court of Appeals for the Seventh Circuit is in conflict with the judgments of other circuits rejecting that remedy. In *Carter* v. *Duggan,* 455 F. 2d 1156 (CA 5th, 1972), where the plaintiff sought both damages and specific relief against judges of the state court, the Court of Appeals for the Fifth Circuit held: "With respect to his attempt to secure either trial or dismissal of the four cases pending against him, we think that it is clear that he has misconceived his remedy. The body vested with the power to compel lower courts to set pending cases for trial is the Supreme Court of Texas. . . ." The same circuit said in another suit in which it invoked the doctrine of judicial immunity, *Collins* v. *Moore,* 441 F. 2d 550, 551 (CA 5th, 1971): "The proper means to correct an error in the proceedings against a defendant is by direct appeal or by writ of habeas corpus." And the Sixth Circuit stated the same conclusion in still another judicial immunity case. In *Cuiksa* v. *City of Mansfield,* 250 F. 2d 700 (CA 6th, 1957), it ruled that appeal and not a collateral action was the proper means for correcting the alleged error of a trial court. So, too, in the instant case, the remedy of injunction is not an appropriate remedy; review by an Illinois appellate court is available for the correction of any such errors and to the extent that is not feasible, the extensive writ of habeas corpus, which does not place the individual judge in personal jeopardy or the state court in receivership, is the proper means.

This is the teaching of this Court as well. For the reasons that this Court refused removal in *Greenwood* v. *Peacock*, 384 U. S. 808 (1966), it is evident that injunctive relief should be denied here. There, petitioners were faced with prosecution—here there was no such showing—and sought removal of the cases to the federal courts on the grounds that petitioners were being prosecuted (1) because they were black; or (2) because they were aiding blacks in securing their rights; or (3) on the ground they could not secure a fair trial in the state court that had jurisdiction over them. This Court held that these were not adequate grounds for the federal court's interfering with the state judicial processes:

> It is *not* enough to support removal under § 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be "denied or cannot enforce in the courts" of the State any right under a federal law providing for equal civil rights. The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under § 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicated by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court. *Georgia* v. *Rachel*, [384 U. S. 780]; *Strauder* v. *West Virginia*, 100 U. S. 303. (384 U. S. at 827-28.)

The decisions of this Court demonstrate, too, therefore, that if the plaintiffs here were ever to find themselves in

a situation in which they could establish the predicate of certain invasion of their civil rights claims by a state court, their remedy would not be the blanket injunction sought in this case, but removal of those cases in which that predicate could be established, in accordance with this Court's ruling in *Georgia* v. *Rachel,* 384 U. S. 780 (1966).

IV. The Decision of the Court of Appeals for the Seventh Circuit Is Inconsistent with the Controlling Authorities Established by This Court Requiring Federal Judicial Abstention from Interference with the Processes of State Criminal Courts.

Research reveals to us no injunction directed to state courts of the breadth and consequences of the injunction that the Seventh Circuit would impose on the state judges in this case. The required reporting to the federal district court by the state courts of all its bail decisions and all its criminal sentencing so that the federal district court may approve or disapprove the state court judge's exercise of his functions is unprecedented. The Seventh Circuit itself drew the analogy to a district court's oversight of "railroad reorganizations," (468 F. 2d at 415), so that the state judge becomes the equivalent of the receiver in bankruptcy, an officer of the federal court and subject to its control. Such drastic interference with the functions of the state court is totally inconsistent with the rules long since established by this Court requiring abstention from interference with the functions of the state judiciary in criminal cases. The principle of non-interference in the sovereign authorities of the state judiciary underlies this Court's decisions in *Pierson* v. *Ray* and *Greenwood* v. *Peacock.* More recent expressions of this concern by this Court are to be found in *Younger* v. *Harris,* 401 U. S. 37 (1971), and *Perez* v. *Ledesma,* 401 U. S. 82 (1971).

The principles so clearly enunciated by the Court in *Younger* v. *Harris* have never been so blatantly violated as by the Court of Appeals in its decision below. In *Younger*, Mr. Justice Black stated for the Court:

> **This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of a "comity," that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.**
>
> **This brief discussion should be enough to suggest some of the reasons why it has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions. . . . (401 U. S. at 44-45.)**

Clearly the Constitution, with its concepts of federalism, does not permit what the Court of Appeals here ordained. State courts are not subordinate to and subject to the control of federal district courts. They are not and cannot constitutionally be made adjuncts of the federal trial courts. And they certainly should not be so subordinated at the instance of individuals who have not been harmed or endangered by the actions of a state court and show no basis on which they are even threatened with such harm and such danger. If state criminal processes can be made into the equivalent of corporate reorganization procedures, at the instance of a nonexistent class of which the plaintiffs are not members, the destruction of "Our Federalism" is complete. Nothing in our jurisprudence suggests a precedent for such gross invasion by the federal judiciary of the role of state courts as the Seventh Circuit has commanded here.

CONCLUSION.

Because the opinion of the Court of Appeals for the Seventh Circuit commands the subordination of the state judiciary to the control of the federal district court in a way that contradicts the rulings of this Court and is in conflict with the opinions of other Courts of Appeals, the Amicus Curiae respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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